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# Workers' Compensation Controvert Research Guide

Phillip Kuck

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## Workers' Compensation Controvert Research Guide

### Guide Information

Last Updated: April 27, 2017

Guide URL:

Description: This site provides information related to controverting a workers' compensation claim in the state of Georgia.

Tags: [workers' compensation](#), [controvert](#), [insurance coverage](#), [employer](#)

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## *Introduction, Scope, and Jurisdiction*

Workers' Compensation laws have been part of the American legal system for over 100 years. Interestingly, there is no uniform workers' compensation system established across the 50 states. Rather, each state implements its own interests in the laws affecting workers compensation in their respective states. Georgia also has its own complex workers compensation system.

Georgia workers' compensation claims are initially heard at the state administrative level by administrative law judges ("ALJ"). If appealed, the Georgia Board of Workers' Compensation ("the Board") examines the case and has discretion to find its own facts. However, no new evidence may be admitted If the Board's decision is appealed, the case goes to Georgia Superior Court, which must uphold the Board's decision as long as there is "any evidence" to support its ruling. The case may then be appealed to Georgia Court of Appeals and Georgia Supreme Court using the same standard of review.

One of the factors that most effects the award the claimant receives is whether the employer or insurer controverts the claim for workers' compensation benefits. Note that an initial invalid notice to controvert does not bar an employer from later controverting by asserting a change of condition occurred. *See Fallin v. Merit Maintenance & Welding, Inc. v.* 283 Ga. App. 485 (2007).

The scope of this research guide is to address Georgia-specific matters regarding the employer/insurer's right to controvert a workers' compensation claim for benefits. It does not cover Federal-specific workers' compensation programs such as the Federal Employee's Compensation Act (5 U.S.C. §§ 8101-8193), the Federal Employment Liability Act (FELA) (45 U.S.C. §§ 51-60), the Merchant Marine Act (46 U.S.C. § 688), the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. §§ 901-950), or the Black Lung Benefits Act (30 U.S.C. §§ 901-945).

This research guide should be used by employers and insurers to understand the importance of controversion and also when and how to controvert a case.

## **Disclaimer**

This research guide is a starting point for a law student or an attorney to research the area of Workers' Compensation. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law Library or consult an attorney.

## **About the Author**

Phillip Kuck will graduate from Georgia State University College of Law in May 2017. He served as Lead Articles Editor for the Georgia State Law Review and also competed in Moot Court. Upon graduation, Phillip plans to join Bovis, Kyle, Burch & Medlin LLC, an all-purpose legal defense firm.

If you have any questions or comments regarding this research guide, please contact Phillip Kuck at [pkuck@boviskyle.com](mailto:pkuck@boviskyle.com)

# Primary Sources

## Georgia Legislation

O.C.G.A. – Workers' Compensation Act – Title 34, Chapter 9

- [O.C.G.A. TITLE 34 Chapter 9.PDF](#)

### 5 Statutory Mechanisms to Suspend Benefits and Controvert

- O.C.G.A. § 34-9-104(a)(1)
  - o Where a claimant has a change in wage earning capacity (e.g. gets a new job), physical condition (e.g. doctors say claimant has reached maximum medical improvement), or status of an employee (e.g. claimant has returned to work full duty without restrictions), an employer or insurer is justified in filing a controvert to suspend workers' compensation benefits.
- O.C.G.A. § 34-9-104(a)(2)
  - o Unless the claim is a catastrophic claim, if the claimant returned to work on light-duty restrictions for 52 consecutive or 78 aggregate weeks, and the employer or insurer files a notice to controvert within 60 days of employee's release to return to work, can switch from Temporary Total Disability benefits to Temporary Partial Disability benefits.
- O.C.G.A. § 34-9-104(b)
  - o If the claimant has already won an award of benefits from a hearing, this section allows for the board on its own motion or by motion of any party to change the award based on some kind of change of condition for the better.
- O.C.G.A. § 34-9-221(h)
  - o Where compensation is paid without an award, the right to compensation can only be controverted after disability benefits have begun upon the grounds of change in condition or newly discovered evidence unless notice to controvert is filed with the board within 60 days of the due date of first payment of compensation and after the initial 21 days provide in the statute (totaling 81 days).
- O.C.G.A. §34-9-240
  - o An employer or insurer may controvert a claim and deny payment of benefits if they have offered the claimant suitable employment and the claimant refused to attempt work with restrictions. The applicability of this statute is more nuanced and requires careful reading or advice from an attorney.

NOTE: While these are five ways to controvert as provided by the legislature, there are many different reasons for which an employer or insurer may controvert a claim. More of these reasons are listed below. Further, an employer or insurer can also controvert *part* of a claim for various reasons.

### Failure to Controvert could mean Attorney's Fees and more

- O.C.G.A § 34-9-108(b)(2-3)
  - o Failure to file forms WC-1 or WC-3 to controvert before the 21<sup>st</sup> day after knowledge of the injury of death may subject the ER/INS to an assessment of penalties or attorney's fees
  - o [O.C.G.A. 34-9-108.PDF](#)

These Code sections can be found free of charge at <http://www.galileo.usg.edu/express?link=zncd&rkey=ss>

## Georgia State Board of Workers' Compensation Rules and Regulations

- Rule 61 (b)(4) –
  - o An Employer or Insurer must complete form WC-3 to controvert when a Form WC-1 has previously been filed with no controvert
  - o The party controverting the claim must furnish copies to the employee and any other person with financial interest in the claim (including physicians and attorneys)
  - o In addition, the controverting party must complete and file a Form WC-4 within 180 days of the date of the controvert
- Rule 201(b-c)
  - o When a claim has been controverted, the Employer or Insurer cannot restrict treatment of the employee to the Panel of Physicians.
  - o Further, if the controverted claim is found as compensable by an ALJ, the employee is authorized to select one of the physicians who provided treatment of the injury prior to the finding of compensability.
- Rule 203 (b)
  - o If a medical expense is controverted, the medical expenses or request for reimbursement must be submitted for payment within one year of the date of service

- Rule 205(b)(3)(c)(1)
  - o If medical treatment is controverted on the ground that the treatment is not reasonably necessary, the burden of proof is on the Employer at the hearing to show that the treatment is not reasonably necessary.
  - o If treatment is controverted on grounds that treatment is not authorized or unrelated to compensable injury, burden of proof on the employee to show that the treatment is authorized or related to a compensable injury.
- Rule 221 (i)
  - o An Employer or Insurer who wishes to controvert and suspend benefits at any time on grounds of change in condition must provide advance notice of 10 days to the employee unless the employee has actually returned to work.
- Rule 221 (d)
  - o To controvert in whole or in part the right to income benefits or other compensation, use Forms WC-1 or WC-3.
- Rule 221 (h)
  - o An Employer or Insurer can controvert after initially accepting compensability on grounds of change in condition by filing Forms WC-2 or WC-2A.

These rules can be found free of charge at <https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/Rules2016.pdf>

## Georgia Case Law

The following list of cases are just a sample of cases involving the employer/insurer's right to controvert:

- ***Peterson/Puritan Inc. v. Day***, 157 Ga. App. 827 (1981)
  - o Holding that the employer failed to demonstrate a change of condition because it did not show that suitable work was available to the claimant.
  - o [Peterson Puritan Inc. v. Day 157 Ga. App. 827.PDF](#)
- ***Cornell-Young v. Minter***, 168 Ga. App. 325 (1983)
  - o Holding that where the employer suspended benefits because the claimant returned to work and was subsequently laid off for reasons other than his injury, the claimant had the burden of proving this his inability to secure suitable employment elsewhere was proximately caused by his previous injury.
  - o [Cornell-Young v. Minter 168 Ga. App. 325.PDF](#)
- ***City of Adel v. Wise***, 261 Ga. 53 (1991)
  - o Where employer offered the employee a suitable light duty job following his return to work with restrictions and where the employee rejected the offer because he would suffer decreased earnings, the employer was correct in suspending benefits pursuant to O.C.G.A. § 34-9-240 and claimant was not entitled to an award.
  - o [Adel v. Wise 261 Ga. 53.PDF](#)
- ***EVCO Plastics et al. v. Burton***, 200 Ga. App. 121 (1991)
  - o An employer can controvert if discharged for cause unrelated to the injury, and the burden is on the employee discharged to prove that he or she is still physically and economically disabled and to show a diligent job search for suitable employment (*see also Maloney and Maughon*).
  - o [Evco Plastics v. Burton 200 Ga. App. 121.PDF](#)
- ***Mintz v. Norton Company***, 209 Ga. App. 109 (1993)
  - o An employer can controvert once guilty judgment is pronounced against the claimant/employee. But, the employee still receives benefits until judgment is pronounced, despite incarceration.
  - o [Mintz v. Norton Co. 209 Ga. App. 109.PDF](#)
- ***Hartford Acci. & Indem. Co. v. Bristol***, 242 Ga. 287 (1978)
  - o Holding a change in "economic condition" or a claimant's earning capacity constitutes a change in condition that may be grounds for controvert. Here, court found the claimant met his burden to secure suitable employment.
  - o [Hartford Acci. Indem. Co. v. Bristol 242 Ga. 287.PDF](#)
- ***Georgia Power Co. v. Brown***, 169 Ga. App. 45 (1983)
  - o Holding where employer seeks to end indemnity benefits (i.e. controvert) pursuant to 104(b), the only relevant "change of condition" is a change in the EE's "wage-earning capacity," not his physical condition.
  - o [Georgia Power Co. v. Brown 169 Ga. App. 45.PDF](#)

## Georgia State Board of Workers' Compensation Forms

- WC-1 – ER's First Report of Injury
  - o In subsection (C), Employer/Insurer has opportunity to controvert from the first report of injury
  - o OR when the employer/insurer accepts the claim, they can accept under subsection (D) as "medical only", which qualifies as a partial controvert, only denying the claimant's right to indemnity benefits
  - o <https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/imported/SBWC/Files/wc001.pdf>
- WC-2 – Notice of Payment / Suspension of Benefits
  - o Subsection C – lists all the reasons to suspend benefits (i.e. controvert)
  - o [https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/board\\_forms/wc002.pdf](https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/board_forms/wc002.pdf)
- WC-3 - Notice to Controvert
  - o Subsection B(1) – claim controverted on specific grounds
  - o Subsection B(2) – medical treatment controverted
  - o Subsection B(3) part of claim is controverted
  - o <https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/imported/SBWC/Files/wc003.pdf>
- These forms can be found free of charge at <https://sbwc.georgia.gov/board-forms>

# Secondary Sources

## Law Journals

Mercer Law Review -

<https://law.mercer.edu/academics/journals/lawreview/>

Periodically runs yearly surveys on new workers' compensation statutes that have been passed by the Georgia legislature

Georgia State University Law Review

"Peach Sheets"

<http://readingroom.law.gsu.edu/gsulr/>

Occasionally reports on new workers' compensation statutes passed by the Georgia legislature

## Treatises

- Kissiah's Georgia Workers' Compensation Law (Lexis)
  - o 2-22 Georgia Workers' Compensation Law 22.04
- Georgia Jurisprudence (WestLaw)
  - o 831 Controverting claim after accepting liability
  - o 830 Controverting claim without paying benefits
  - o 829 Time in which to file notice to controvert
  - o 832 Effect of newly discovered evidence after accepting liability
  - o 875 Controversion of case
- Georgia Workers' Compensation Claims with Forms (WestLaw)
  - o 239 Controverting the right to compensation
- Georgia Workers' Compensation Law & Practice (WestLaw)
  - o 207 Controverting within 81 days
  - o 206 Controverting within 21 days
  - o 208 Controverting after 81 days
  - o 205 Controverted claim

## Industry Tools

- ICMS
  - o <https://wconline.sbwg.ga.gov/pages/public/login/login.xhtml>
- Workers' Compensation Resource Tools
  - o <https://www.swiftcurrie.com/resource-center/resource-tools>
- Settlement Evaluator
  - o <http://settlementevaluator.com/>

## Industry News Sources

Workerscompensation.com

<http://www.workerscompensation.com>

Workcompwire.com

<http://www.workcompwire.com>

Workcompcentral.com

<http://www.workcompcentral.com>

## Books

Workers' Compensation and Employee Protection Laws in a Nutshell

- o <http://gilfind.gsu.edu/vufind/Record/3217958>

## Blogs

- Georgia Workers Compensation Attorney Blog
  - o <https://www.georgiaworkerscompensationattorneyblog.com/>

## Non-Exhaustive List of Reasons to Controvert

Employers and Insurers often wonder what reasons to cite on the notice to controvert. With the help of resources located online, I have found a plethora of reasons parties can use to controvert a claim.

- Employee returned to work on [DATE] without restrictions from the authorized treating physician
- Employee returned to work on [DATE] with restrictions from the authorized treating physician at pre-injury or higher rate of pay
- Employee returned to work on [DATE] with restrictions from the authorized treating physician at reduced pay of \$ [AMOUNT] per week and temporary partial disability benefits are being paid.
- Employee was able to return to work on [Date] without restrictions from the authorized treating physician, the employee is being given 10 days' notice, and the authorized treating physician's report is attached
- Employee has undergone a change in condition pursuant to O.C.G.A. § 34-9-104(a)(2) because the employee is not working, did not have a catastrophic injury, has been determined by the authorized treating physician to be capable of performing work with limitations or restrictions for the past 52 consecutive or 78 aggregate weeks, and was sent Form WC-104 within sixty days of the release. Temporary partial disability benefits are shown above in Part B.
- Employee has been offered suitable employment pursuant to O.C.G.A. § 34-9-240 and has unjustifiably refused to attempt to perform the job. Form WC-240 was sent at least ten days before the employee was required to report for work. A copy of the Form WC-240 is attached.
- This was not a catastrophic injury and the maximum number of temporary total disability payments has been paid.
- The entire permanent partial disability benefit has been paid.
- The maximum of temporary partial disability payments has been paid
- This claim is being controverted within 60 days of the due date of first payment.
- The present injury/disability/death did not arise out of and in the course of employment.
- The condition complained of is not the result of an injury as defined by the Georgia Workers' Compensation Act per O.C.G.A. § 34-9-1.
- The injury complained of is the result of a willful act of a third person for reasons personal to employee.
- The disability complained of is no longer causally related to an injury or aggravation arising out of and in the course of employment.
- Employee failed to give proper notice as required under the Georgia Workers' Compensation Act per O.C.G.A. § 34-9-80.
- The employee's claim is barred by the statute of limitations per O.C.G.A. § 34-9-82.
- The accident did not occur in this state, and the Georgia State Board of Workers' Compensation has no jurisdiction to hear this claim under O.C.G.A. § 34-9-242.
- Claimant was not employed on the alleged date of accident.
- Claimant is not an employee of the alleged employer.
- Claimant is an independent contractor and not entitled to benefits under the Georgia Workers' Compensation Act.
- Claimant does not qualify for benefits sought.
- Employee is a farm laborer domestic servant/railroad employee and not subject to the Georgia Workers' Compensation Act per O.C.G.A. § 34-9-2.
- Accident is a result of misconduct, intentionally, self-inflicted injury or willful failure or refusal to use a safety appliance or perform a duty required by statute. O.C.G.A. § 34-9-17.
- Employee was under the influence of alcohol or a controlled substance at the time of injury, which is prohibited per O.C.G.A. § 34-9-17.
- The employee's death did not result from the injury to which he or she is entitled to compensation as set out by O.C.G.A. § 34-9-365.
- The employee has no physical injury or physical disability arising out of and in the course of employment.
- All compensation due under the Act has already been paid to the Claimant for injury date in question.
- Any claim for benefits stemming from this injury date has already been settled by stipulation and this stipulation has been approved by the State Board.

This non-exhaustive list of reasons for controverting can be found free of charge at [https://www.swiftcurrie.com/uploads/file/Cheat%20Sheets\\_2016/ReasonstoControvert\\_2016.pdf](https://www.swiftcurrie.com/uploads/file/Cheat%20Sheets_2016/ReasonstoControvert_2016.pdf) and [https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/board\\_forms/wc002.pdf](https://sbwc.georgia.gov/sites/sbwc.georgia.gov/files/board_forms/wc002.pdf)